

MINUTES
draft
STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

September 10, 2001 – Regular Meeting

Rowe Six Conference Center
Building 1
4224 6th Avenue SE
Lacey, Washington

Item 1: Call to Order

Acting Chair Charles Carelli called the meeting to order at 1:30 p.m. A quorum was present.

Item 2: Roll Call

EFSEC COUNCIL MEMBERS

Community, Trade & Economic Development
Department of Ecology
Department of Fish & Wildlife
Department of Natural Resources
Utilities and Transportation Commission

Heather Ballash
Charles Carelli
Jenene Fenton
Tony Ifie
Dick Byers

EFSEC STAFF AND COUNSEL

Allen Fiksdal
Mike Mills
Michelle Elling

Irina Makarow
Mariah Laamb
Robert Fallis, AAG, EFSEC

GUESTS

Bill Staeger, Jones & Stokes
Mike Sotak, Duke Energy
Laura Schinnell, Energy Northwest
Karen McGaffey, Perkins Coie
John Arbuckle, Energy Northwest
Mike Elmer, Starbuck
Liz Thomas, Preston Gates Ellis
Chuck Lean, Wallula Generation
Doug Kilpatrick, WUTC
Brian Carpenter, Rebound

Mike Torpey, BP Cherry Point
John Everingham, SAIC
Jim Thornton, Golder Associates
Susan Ross, Golder Associates
Ron Lavigne, CFE-AGO
Carol Kraege, Ecology
Gary Sprague, Fish & Wildlife
Alan Harger, WSDOT
Gayle Rothrock

Item 3: Approval of Minutes – July 9, 2001 Regular Meeting

Jenene Fenton made the following motion.

Motion: To approve the minutes of the July 9, 2001 Regular Meeting as presented.

Heather Ballash seconded the motion.

Action: The motion was passed unanimously.

Item 4: Adoption of the Proposed Agenda

The agenda was accepted as presented.

Item 5. Rulemaking

Progress Report

Allen Fiksdal, EFSEC Manager

Mr. Fiksdal reported that staff had e-mailed a Draft Rule Analysis Matrix to Council members last week. Members were asked to review the matrix which links comments from the Deborah Ross White Paper; Charlie Earl Report; Joint Legislative Task Force Report; and Staff Comments, to specific sections of EFSEC's rules (Title 463, Washington Administrative Code (WAC)), and provide comments back to staff in two-three weeks.

Item 6. Sumas Energy 2

Updated Schedule

Irina Makarow, EFSEC Staff

Ms. Makarow highlighted the following meetings and hearings that the Council will conduct as part of its consideration of the Sumas Energy 2 (SE2) Second Revised Application. On September 24, the third Prehearing Conference will be held at Rowe Six beginning at 9:00 a.m.; on October 16, the Council will hold an evening public meeting at the Nooksack Valley High School to hear comments on the Draft Supplemental Environmental Impact Statement and the 401 Water Quality Certification, and that afternoon will tour March Point Cogeneration Project near Anacortes. The Adjudicative Hearings are scheduled for the week of October 29-November 2 in Bellingham, and will resume in Olympia, November 13-16.

Item 7. Energy Northwest Columbia Generating Station & WNP-1/4

Columbia Operations

John Arbuckle, Energy Northwest

Mr. Arbuckle reported the Columbia Generating Station was currently on line and operating at 100 % power. The plant has been on line for 40 consecutive days.

Resolution 300 – Sanitary Waste Treatment Facility

Mike Mills, EFSEC Staff

Mr. Mills asked Mr. Arbuckle to briefly review Energy Northwest's request for changes in the operating and monitoring requirements for the Sanitary Waste Treatment Facility (SWTF) that serves the Columbia Generating Station (Columbia) and WNP-1 sites. Mr. Arbuckle explained that Energy Northwest's original proposal was to revise Council Resolution No. 259 to change the sample location for pre-discharge (effluent) radiological monitoring to allow for monitoring

of the influent waste. Earlier this year, they submitted a request for an additional change to the resolution that would permit Energy Northwest to receive and treat additional sanitary wastes from U.S. Department of Energy (USDOE) projects operating on the Hanford site and other offsite locations.

Mr. Arbuckle indicated that they had spoken further with the U.S. Nuclear Regulatory Commission (NRC) on the issue noted by Lynn Albin, Department of Health, at the August regular meeting, about a possible licensing issue because the waste accepted from the USDOE 400 area contains tritium, that comes from the radiological contaminated groundwater that is the source for potable water for that area. Energy Northwest expects those discussions to come a positive resolution in the very near future. The points they were focusing on with the NRC were: 1) the fact that this issue had been previously reviewed and closed out by NRC in 1993, when Energy Northwest first entered into an agreement with USDOE to accept the waste; 2) no violations or deviations had been identified in NRC inspection reports filed in 1992 and 1993; and 3) the acceptance of the waste in the SWTF had no impact on the Columbia Generating Station NRC Operating Licensed because: a) tritium is exempt from domestic licensing requirements for byproduct material; b) tritium is ubiquitous to the Hanford Site; and c) the levels of tritium are below the Safe Drinking Water Act standard and, as noted by Ms. Albin at last month's Council meeting, do not represent a health hazard.

In response to a question about where the offsite waste might come from, Mr. Arbuckle noted that it was his understanding that USDOE-Hanford would be the main customer. He will check to see if Energy Northwest has identified any other potential offsite and/or private entities are interested in using the facility.

Mr. Mills stated that staff is recommending that the Council approve Resolution No. 300, thereby authorizing the operational and monitoring requirements for the Energy Northwest SWTF. The Department of Health has provided a letter indicating that they support the resolution, subject to several conditions that have been incorporated into the requirements, and do not feel that the discussions with NRC should delay issuance of the resolution. The department reiterates that no radiological waste or other non-sanitary waste streams are to come into the facility. Approval of this resolution will close out Resolution No. 259, Amendment 1.

Jenene Fenton made the following motion.

Motion: To approve Resolution No. 300, to modify certain monitoring requirements for the Sanitary Waste Treatment Facility, and allow Energy Northwest to accept waste from offsite sources; and close out Resolution No. 259, Amendment 1.

Tony Ifie seconded the motion.

Action: The motion passed unanimously.

Item 8: Starbuck Power Project

Application Submittal/Schedule

Irina Makarow, EFSEC Staff

Ms. Makarow reported that the Starbuck Power Company, by letter dated August 27, 2001, had submitted an Application for Site Certification for the Starbuck Power Project. The initial filing

fee of \$45,000 was received on August 31. The Starbuck project will be designated as Application No. 2001-02.

Mike Elmer, Starbuck Power, and counsel Liz Thomas, were introduced and briefly reviewed the company's request that EFSEC consider adopting a procedural approach that would use the environmental impact statement (EIS) process to identify issues for the adjudication and encourage resolution of issues prior to the evidentiary hearing(s) being held. They referred to the August 27 letter and outlined the benefits the company sees from integrating the requirements of the State Environmental Policy Act with the Council's adjudicative processes. The letter also includes a proposed schedule, which from the company's perspective, would accelerate the beginning of the hearing process and provide opportunities for both shortening and streamlining the overall siting process, while meeting the Council's obligations for conducting hearings to receive public comments.

Ms. Thomas stated that the proposed approach borrows from the Oregon siting process, which provides for identification of issues prior to adjudication. The deadline for intervention would be set prior to issuance of the Draft Environmental Impact Statement (DEIS). Parties who wished to raise issues in the adjudication would be required to identify all issues through their DEIS comments. Any issues not raised during the DEIS comment period, would be excluded from the evidentiary hearing. The first prehearing conference would be held to coincide with the notice of DEIS scoping meetings (late October-early November) and interested parties would file for intervention at that time. An order on intervention would follow in late November. In response to a question on what action would be required of the Council to make the procedural changes being proposed by Starbuck, counsel Rusty Fallis commented that it would probably take a prehearing order to implement the approach being suggested.

Ms. Thomas responded to a question about staff involvement in the proposed approach, by noting that the recent legislative changes to the Council's statute provide for staff to take a role in assisting with issue identification and recommending resolutions to disputed issues. Staff could also make recommendations to the Council on conditions that would allow site approval.

Mr. Elmer indicated that they had been meeting with potential intervenors and there was some willingness to support the procedural changes being proposed by the company. Member Heather Ballash pointed out that the company should consult with the Counsel for the Environment (CFE) appointed for this project and other state agencies that would typically have an interest in EFSEC projects. Ms. Makarow noted that Ron Lavigne and Mike Dunning had been appointed by the Attorney General's Office as co-CFE for this project. Mr. Elmer and Ms. Thomas responded that they would make those contacts.

Member Dick Byers expressed concern that the role being proposed for staff could put them in a position of becoming an advocate for any given issue, and it could raise ex parte issues. It was pointed out that the early resolution of issues is one of the goals that the Council hopes to achieve in conducting current reviews and rulemaking initiatives. Mr. Fallis was asked to look into the questions on the role of staff.

Starbuck's request for procedural changes will be placed on the next Executive Committee meeting agenda. To aid that discussion, the Council requested that Ms. Thomas submit a letter to the Council more fully scooping out the proposed changes to the schedule for intervention.

Ms. Makarow stated that on Wednesday, October 3, the Council has scheduled an agency scoping meeting on the application at Dayton; and that evening will hold a public meeting in Starbuck to provide information on the project and take public comment.

Item 9: Wallula Power Project

Application Submittal/Schedule

Irina Makarow, EFSEC Staff

Ms. Makarow reported that Wallula Generation, LLC (formerly Newport Northwest, LLC), by letter dated August 17, 2001, had submitted an Application for Site Certification for the Wallula Power Project. As part of the review of the transmission line for this project being conducted by the Bonneville Power Administration (BPA), Wallula Generation will be submitting an Environmental Report to the Council's independent consultant, Jones and Stokes, on September 4, to support the development of the joint federal/state environmental impact statement. The required filing fee of \$45,000 has been received. The Wallula Power Project will be designated as Application No. 2001-01.

Ms. Makarow indicated that in their August 17 transmittal letter, Wallula Generation was requesting that the Council waive the requirement of Chapter 463-42-362 WAC – Built Environment-Land Use and Shoreline Use – that requires an applicant to provide copies of land use plans and zoning ordinances for land within a 25-mile radius of the plant site. Chuck Lean, counsel for the applicant, stated that they had provided the Walla Walla County plans with the application, and based on discussions with Jones and Stokes, it appears that other plans are not needed to satisfy the requirement. Jones and Stokes will provide a recommendation to the Council on the requested waiver as part of its application review report that is expected at the end of September.

Ms. Makarow reported that on Tuesday, October 2, the Council would be holding an agency scoping meeting in Pasco in the early afternoon; and an evening public meeting in Burbank.

In response to a question about whether the procedural changes being requested for the Starbuck project would also affect the Wallula schedule, if they were to be approved, Mr. Lean offered that the applicant would be agreeable to the changes, as a way of streamlining the process and shortening the hearing process.

Item 10: BP Cherry Point Project

Update

Michelle Elling, EFSEC Staff

Ms. Elling reported that the Draft Potential Site Study had been received from Shapiro and Associates and was being distributed to the proponent and agencies for review. Comments are due back to staff by September 18; with the final study report due the end of September.

Item 11: Mercer Ranch Power Project

Update

Michelle Elling, EFSEC Staff

Ms. Elling introduced Jim Thornton, Golder and Associates, representing the proponent, Cogentrix, who presented an update on the status of the project. He indicated that several key changes had been made to the project as a result of ongoing discussions with state and federal agencies. Those changes involve: going to air cooling, because of the regulatory issues associated with the cooling pond; moving the project closer to the power lines; reducing wetland impacts; and having a zero discharge system that doesn't discharge to state or U.S. waters.

Mr. Thornton stated that they expected to submit an application to the Council at its December 2001 meeting. He added that Cogentrix is excited with the location, as it has both gas and transmission lines onsite, and they are moving forward with the developing the application. Member Byers asked if lateral gas line was going to be required to serve the site. Mr. Thornton responded most likely not, but there could be a very short line to get to the property.

Member Byers questioned that with the substantial changes to the project coming after completion of the potential site study, wouldn't large portions of the study now not be relevant. Mr. Fiksdal responded that was correct, because with the change in cooling and ponds not being needed, a number of the significant issues raised in the study were no longer applicable. He pointed out that one of the key purposes of a potential site study is to identify issues early on in the process of developing a project. Mr. Thornton added that one of the key hurdles they would have faced in keeping with the cooling pond system, was that the Attorney General's Office was advising Ecology that the pond should be regulated as a lake, and that would have presented very challenging regulatory issues.

Ms. Elling noted that discussions on water rights for the project were ongoing. Mr. Thornton commented that they were exploring a number of options for securing water for the project.

Item 12: Satsop Combustion Turbine Project

PSD Permit Review Status

Irina Makarow, EFSEC Staff

Ms. Makarow reported on the status of Duke Energy/Energy Northwest's (Duke) application for a new Notice of Construction/Prevention of Significant Deterioration (PSD) air permit for the Satsop Combustion Turbine (CT) Project. On August 28, 2001, the Council issued a notice providing the public an opportunity to comment on the draft permit and fact sheet prepared by the EFSEC/Ecology permit writer. The comment period extends through the evening of October 4, when a public hearing will be held in Elma to take oral or written comments on the proposed permit. Depending on the number of comments and how long it takes to prepare the responses, staff is currently planning to bring the final PSD permit to the Council for action at its October meeting. If there are extensive comments, action on the permit could be delayed to either a special meeting in October or, at the latest, the regular November meeting. Duke representatives responded that they are hopeful the Council can act as quickly as possible on the final permit.

Plan Reviews

Mike Mills, EFSEC Staff

Mr. Mills reviewed the status of the review of construction plans for the Satsop CT Project. On June 25 and August 1, 2001, Duke Energy/Energy Northwest (Duke) submitted a number of plans and specifications that require Council review and approval prior to the start of construction. These initial plans primarily cover site preparation and grading activities, along with general environmental and safety procedures. Staff, in cooperation with the Departments' of Ecology and Fish & Wildlife, and Grays Harbor County, has completed review of the initial plans for environmental and safety procedures and construction drawings and specifications. Mr. Mills stated that the plans were found to be in compliance with certification conditions; building and safety codes; and environmental standards. Staff is recommending that the Council delegate authority for the approval of certain plans and specifications for the Satsop CT Project to the EFSEC Manager. If such delegation is granted, Mr. Fiksdal, based on the findings of the agency review team, would proceed with approving the plans and documents provided in the June 25 and August 1, 2001 Duke submittals.

Mr. Mills noted that earlier this year, the Council had approved this same delegation to the staff manager for the review and approval of plans for the Chehalis Generation Facility. As with the Chehalis project, two plans – the Initial Site Restoration Plan and Greenhouse Mitigation Plan – would require approval by the full Council. The Council at its June 18, 2001 special meeting approved the Initial Site Restoration Plan; and the Greenhouse Gas report is due no later than one year prior to each turbine coming on-line.

Mr. Mills described the procedure that staff would follow in approving plans and resolving any plan issues for the Satsop CT Project would be the same as established for Chehalis. If agencies (and EFSEC compliance staff) recommend approval, the manager is authorized to approve the plans. If the agencies cannot come to resolution with Duke on plan issues, they can ask EFSEC staff to intercede and attempt to work out a resolution. If unsuccessful, then the plan(s) would be brought to the Council for a decision. It is expected that the agencies and Duke will make every effort to resolve questions or issues before coming back to the Council.

Jenene Fenton made the following motion.

Motion: To delegate approval authority to the EFSEC Manager for Satsop Combustion Turbine Project construction plans (as specified in the Site Certification Agreement), with the exception of the Initial Site Restoration Plan and the Greenhouse Gas and Carbon Dioxide Mitigation Report. If state and/or local agencies and Duke Energy/Energy Northwest cannot reach agreement, then the plan(s) must come before the Council for a decision.

Dick Byers seconded the motion.

Action: The motion was passed unanimously.

Construction Activity – Laura Schinnell and Mike Sotak, representing Duke, provided a brief summary of activity occurring in preparation of construction beginning at the site this week. They indicated that staff and the agency review team members had received an Environmental Commitment Book, containing all of the current permits and procedures that will be followed by Duke and its contractors. All of the plans and specifications requiring approval prior to start of construction were submitted to the Council for review and today's action will allow them to proceed with construction. It was noted that Grays Harbor County, under its contract with the

Council for plan review, had authorized grade and fill work to begin at the site, based on their review of the plans, drawings, and specifications provided in Duke's August 1, 2001 submittal. In addition, based on direction received at the August 13 Council meeting, Duke began contractor mobilization, vegetation clearing, and putting erosion control measures in place, during the first week in September. The initial excavation work will focus on leveling and contouring the site.

Site Visit – Acting Chair Carelli asked if staff had been able to arrange a visit to the site to coincide with the October 4 PSD hearing. Mr. Mills responded that arrangements had been made to have the Council meet with Duke officials and tour the project site on the afternoon of the 4th. Staff will provide transportation for members for the site visit and hearing.

Item 13: Chehalis Generation Facility

Site Visit – September 10

Mike Mills, EFSEC Staff

Mr. Mills reported that the Council had visited the Chehalis Generation Facility site this morning. The visit provided members with an opportunity to meet with Chehalis Power, Tractebel, and contractor personnel; to review construction plans; and tour the facility. Members expressed appreciation for arranging the visit and commented that such visits are very helpful in terms of visualizing the layout of plant buildings and operating systems. Acting Chair Carelli commented that he also found the weekly construction progress reports prepared by staff as a good way to track activities. Members expressed an interest in visiting the Chehalis (and Satsop) site(s) a couple of times a year to be able to observe construction progress firsthand. It was noted that visits to other energy project sites, such as the Centralia coal plant and the gas-fired unit that is being constructed nearby, would also be helpful to members.

Item 14: Other

Ecology Contracting

Acting Chair Carelli, introduced Carol Kraege, Department of Ecology, and Gary Sprague, Department of Fish and Wildlife, to further discuss the departments' interests in contracting with the Council to provide consulting services in support of siting studies, application reviews, and permit development. Mr. Carelli indicated that the agencies had been looking at ways that they could work with EFSEC and project proponents, particularly during the early phases of project development, to benefit the overall process.

Ms. Kraege stated that this matter had been discussed with the Executive Committee and the Department of Ecology was very interested in coming up with a way that they could participate more fully in the process. She noted that proponents want the agencies' input early and they have been struggling with how to provide their expertise early-on during the potential site study development with limited staff resources, while maintaining the ability to intervene, and avoid ex parte problems, during the adjudicative phase of the process. Both Ecology and Fish and Wildlife see the benefits of this involvement as a way to identify, and hopefully resolve, issues and possible conflicts early in the process, thereby reducing the number of participants and shortening the adjudicative hearings. Mr. Sprague added that this early coordination could lead to settlement agreements that would reduce the need for formal intervention.

Mr. Fiksdal commented that staff would be meeting with counsel Fallis to review the agencies' proposal to see if there is a chance for going forward with the contracting approach being presented by Ecology and Fish & Wildlife. At the September 4 Executive Committee meeting, Mr. Fallis had raised concerns that the approach being suggested by the agencies, could create possible ex parte issues for the Council in their role of decision-maker, if they were to have inappropriate communication or receive advice from potential intervenors. Mr. Fallis said that he had been discussing this matter with Ecology counsel Andy Fitz, and he and Allen planned to report back to the Council in the very near future on how to proceed.

Starbuck/Wallula Press Release

Mr. Fiksdal reported that staff had issued a press release on September 5, 2001, announcing receipt of the applications filed by Starbuck Power and Wallula Generation.

Response to Tacoma News Tribune Article

Mr. Fiksdal indicated that he had prepared a response to an article that was carried in the Tacoma News Tribune in August entitled, "Bar obstructionist Energy Facilities Council from citing global warming." He said that response attempted to provide facts on the Council's siting history, its responsibilities, and correct information on the processing of the Sumas Energy 2 applications.

Everett Delta Projects I and II – Petition for Declaratory Order

Mr. Fallis provided an update on the status of the Council's review of Florida Power and Light (FPL) Energy, Inc.'s Petition for a Declaratory Order regarding the applicability of the site certification provisions of chapter 80.50 Revised Code of Washington (RCW) to two power plants in Everett, Washington. He indicated that FPL Energy had filed additional materials last Friday, September 7, in support of their petition. Staff had not had an opportunity to review those documents and was not in a position to make a recommendation at today's meeting. Mr. Fallis stated that this matter would be brought to the Council at its October meeting for consideration.

Member Byers asked if public comment had been received on the petition. Mr. Fiksdal responded that none had been received during the 30-day comment period. Mr. Byers questioned if Friday's filing would require another comment period. Mr. Fallis replied that another comment period was probably not required, but perhaps the information could be posted to the Council's website. Because no one has expressed interest up to this point, it would appear unlikely that additional comments would be received. Member Fenton asked if the notice had been published in local newspapers. Mr. Fiksdal responded that it had not. Ms. Fenton noted that it was possible that the public was unaware that we were looking for comments. Mr. Fallis responded that while he was satisfied that noticing requirements had been met, he would discuss this with staff to determine if an additional opportunity to comment would be appropriate.

Note: On September 17, 2001, the Council made notice to interested persons, including local newspapers, that comments on the petition would be accepted through Friday, October 12, 2001.

Public Comment – Mr. Carelli asked if any members of the public wished to comment:

Brian Carpenter (representing Rebound) – Stated that it was not clear from the earlier discussion on what Starbuck Power was asking for in the way of integrating the environmental impact statement (EIS) requirements with the adjudicative proceeding. He questioned how it would work for interested persons or potential intervenors to have enough information before issuance of the EIS documents to make a decision about possibly intervening in the evidentiary hearing. Mr. Carelli indicated that he had a similar concern that potential intervenors not be precluded from participating if issues or additional information are identified through the EIS process. Mr. Fallis noted that while the Council has to meet due process requirements, it does have latitude in structuring hearings, to include commencing an adjudication prior to issuance of the DEIS.

Mr. Carelli stated that the Council would begin looking into Starbuck's request at the next Executive Committee meeting to gain a better understanding of the EIS and hearing requirements. Member Heather Ballash added that applicants and CFEs should be involved in this discussion.

Item 15: Adjourn

The Council was adjourned at 2:50 p.m.